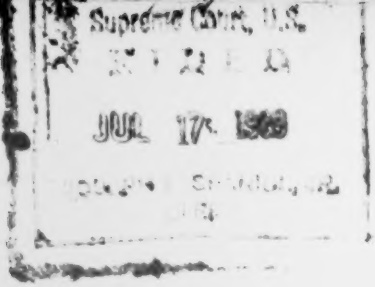
89-91



CASE NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

CHARLES M. AND MITSUKO ANDERSON,

Petitioners

vs.

PARCOM, INC.,

Respondent.

APPENDIX TO
PETITION FOR WRIT OF CERTIORARI
TO THE CIRCUIT COURT OF
FAIRFAX COUNTY, VIRGINIA

CHARLES M. ANDERSON
pro se
8401 Cathedral Forest Dr.
Fairfax Station, Va. 22039
Ph: (703) 643-2562

MITSUKO ANDERSON
by counsel
GEORGE J. VIERTEL
Attorney at Law
9525 Georgia Ave.
Silver Spring, MD.
(301) 589-7060

INDEX TO APPENDIX

Finding at Trial (included in next)	A-1
Trial Judge Letter Opinion	A-1
Trial Judge Opinion at Motion on Agency in re his Letter Opinion	A-9
Final Order	A-10
Trial Judge Agreement with Appellant's Statement of Facts	A-14
Virginia Supreme Court's Denial of Petitioners' Petitioner for Appeal	A-16
Virginia Supreme court's Denial of Petitioner's Petition for Reconsideration	A-18
Petitioner's Statement of Facts of May 17, 1988	A-19
Judge Brown's 7/17/85 Order w/ 5/16/85 Letter Opinion	A-36
Va. Code §54-11 2, 128 , 142 D.	A-44
Virginia Supreme Court Rule 5:11(d)	A-47

Nineteenth Judicial Circuit of Virginia
Fairfax CountyJudicial Center

November 13, 1987

George J. Viertel, Esq.
Edward D. Hubacher, Esq.
Charles W. Sickels, Esq.
William L. Carey, Esq.
Mr. Charles M. Anderson

Re: Parr Excellence, Inc. t/a PARCOM vs. Charles M. Anderson et al,Ch.No.98228

Dear Counsel:

The above-styled matter came before the Court for trial on October 6-8, 1987.

At the conclusion of the trial, a personal judgment was rendered against Charles M. Anderson by the Court. The Court also ruled that the deed by which the property known as 8401 Cathedral Forest Dr. was conveyed to "Charles M. Anderson and Mitsuko Anderson,his wife, tenants by the entirety" created an estate of tenancy by the entirety. The Court reserved judgment on whether the mechanics lien filed by the Complainant could be enforced agianst the

property on Cathedral Forest Drive.

It is the opinion of the court that the mechanics lien can be enforced against the property.

Defendants have cited the case of Vasilion v. Vasilion, 192 Va. 735 (1951), as dispositive of the issue of enforceability. In Vasilion a father sought to enforce a a judgment secured against his son upon property alleged to have been owned by the son and his wife as tenants by the entireties. At page 740 the statement is made:

(page 2)

> It follows that the entirety isliable for the joint debts of both spouses and is reachable against them by proper process. 35 A.L.R. 144. But where a tenancy by the entirety in the fee simple is once created the property iscompletely immune from the claims of creditors against either husband or wife alone..."

In contract, a mechanics'lien does not represent a claim of a personal debt owed, but instead is a claim against the proper-

ty itself. Nicholas v. Harrisonburg Building & Supply Co., Inc., 181 Va. 207, 211 (1943). It is not the underlying contract for performing work and supplying materials which creates the lien. Rather, it is the use of materials furnished and work expended that enables the lien to attach to a given property. See Weaver v. Harland Corporation, 176 Va. 224, 231 (1940). A mechanics' lien is intended to give those who have enhanced the value of property the security of a lien to the extent they have added value. United Masonry, Inc., v. Jefferson Mews, Inc. 218 Va. 360, 378 (1977). The in rem nature of a mechanics' lien is embodied in the provisions of the Virginia Code for the establishment of the lien. Section 43-3 states in part:

> All persons performing labor or furnishing materials...for the construction...or improvement of any building or structure...shall have a lien, if perfected as hereinafter provided,

> upon such building or structure... for the work done and materials furnished. But when the claim is for the improvements to an existing structure only, no lien shall attach to the property improved unless such improvements were ordered or authorized by the owner or his agent.

This section indicates that the basis for a mechanics' lien is the work performed and material furnished with respect to a given property, and not any personal obligation undertaken by the owner of the property interest. Therefore, the absence of an underlying contractual obligation with an owner is not fatal to the enforcement of a mechancis' lien. Section 43-3 however cannot be construed so as to effect an unconstitutional taking of private property without the owner's consent. See Feuchtenberger v. Williamson, 137 Va. 578 586 (1923). The Virginia Supreme court in Feuchtenberger stated,

> We think it clear that the General Assembly here only intended to au-

> thorize mechancs' liens upon the interest or estate in the land of the person requiring or authorizing the work to be done. If it could be otherwise construed...it would be held to be an attempt to take private property for private purposes without the owner's consent and without due process of law.

(page 3)

Therefore, for a mechanics' lien to be enforceable against any given property, it must be shown thatthe work was done with the owner's authorization or consent. See 53 Am. Jr. 2d Mechanics' Liens §113 (1970).

In the case at hand, both husband and wife own an undividied interest in the property in question. The testimony reveals that Mrs. Anderson knew that she owned the Cathedral Forest property as a tenant by the entirety, that is, with an indivisible interest in the property; that she knew her husband was constructing a building on that property in which each owned an indivisible interest; that she had no objection to this

construction, and in fact acquiesced and assented to it; that their interest in the property stood to benefit from the construction; and that this construction was to be accomplished through her husband contracting with various parties to perform work and provide materials. Mrs. Anderson's testimony establishes that she knew Complainant was performing the work, that she in fact acquiesced and assented to this performance, and that she was willing to accept the benefit of the enhanced value to her property that Complainant's performance accomplished. This evidence is sufficient to establish the consent necessary to bind one spouse's interest in an entireties estate under a mechanics' lien when the other spouse has contracted with the performing party. See id.§142. As is apparent from the evidence, the intent of the Andersons was to enhance the value of their property thr-

ough Mr. Anderson's construction of the house, with Mr. Anderson taking all necessary steps to insure completion of the construction. Thus, the Court finds that Mr. Anderson authorized Complainant's performance on behalf of the indivisible interests of the Andersons together, in addition to Mrs. Anderson's consent to the work performed by the Complainant.

Under Feuchtenberger, Mrs. Anderson's authorization and/or consent combined with the actions of Mr. Anderson are enough to allow enforcement of a mechancis' lien against their interest in the property. The mechanics' lien statute was not meant to be frustrated in its enforcement against estates by the entireties solely because only one spouse signs the underlying contract, when the other spouse authorizes, consents to, and stands to benefit from the work performed by the contractor under

the contract.

The Complainant's mechanics lien against the Cathedral Forest property may be enforced. It is requested that an appropriate Order be drafted by counsel for the Complainant for presentation to the Court.

Very truly yours,

/a/
Thomas J. Middleton

"It appears to me that the case which has been asserted for reconsideration is, primarily, based upon an agency theory. And all of the arguments or many of the arguments that have been made here relate to the fact that there was a contract and that Mrs. Anderson was not the agent of her husband or had not joined in with him in this endeavor to build this house. That is not what the decision that I made is about. My decision is not based on agency. It's not connected with the theory of agency. (emphasis added) It is connected with the fact that improvements were made to this house, and they were made by Mr. Anderson. And connected with that is a statement made in my opinion and my opinion is, from the testimony of Mrs. Anderson, is that that testimony established that she knew that Mr. Anderson was doing this work. That she, in fact, acquiesced and assented to the performance of this work. Particularly, in this case, the carpet. That's what we are talking about, specifically. (emphasis added) And that she was willing to accept the benfits of the enhanced value to her property. Further, she was a tenant by the entirety. She knew she had an ownership in this property." (transcript 1/21/88, pp. 1-34)

VIRGINIA: IN THE CIRCUIT COURT OF FAIRFAX COUNTY

PARCOM, INC., *
COMPLAINANT, *
CH.NO.98228
V. *
CHARLES M. ANDERSON, et al., *
DEFENDANTS *

ORDER

This cause came to be heard at trial on October 6, 7, and 8, 1987, the parties appearing by counsel, except Defendant, CHARLES M. ANDERSON, appearing pro se.

At the conclusion of the trial, the Court ruled that the subject Deed of conveyance created an estate of Tenants by the Entirety, that title recognized by the Commonwealth for husband and wife, each taking the whole; that defendant Charles M. Anderson was indebted to complainant in the amount of $4,851.50 together with a contractual service charge thereon at the rate of Eighteen Percent (18%) from January 16,

1986, as to one-third, February 16, 1986, as to one-third, and March 16, 1986 as to one-third until October 8, 1987, the date of judgment, and thereafter at the judgment rate of eight percent (8%) until paid pursuant to Va. Code Section 6.1-330.54; and that no personal judgment could be had against defendant Mitsuko Anderson; and that it withheld judgment as to whether the subjects' mechanics' lien could be enforced against the subject land.

UPON CONSIDERATION, the Court in its opinion letter dated November 13, 1987, hereby made a part of this Order by reference ruled that said lien could be enforced against said land.

UPON CONSIDERATION WHEREOF, it is

ADJUDGED, ORDERED AND DECREED that defendant CharlesM. Anderson is indebted to complainant in the principal amount of $4850.51, $1,433.64 contractual service

charge, $727.71 attorney's fees, $10.00 lien recording fee, $93.00 cost of filing suit, making a total amount due of $7,114.86 with interest on the principal amount of $4850.51 at the judgment rate of Eight Percent (8%) per annum from October 8, 1987, hereinafter until paid, and that the mechanics' lien filed on the following described real property: Estate 7-A, Section One, Cathedral Forest Drive, Fairfax Station, Virginia, owned by Charles M. Anderson and Mitsuko Anderson, his wife, is valid and enforceable.

THIS JUDGMENT IS FINAL, except as to pending sanctions.

ENTERED: March 25, 1988

/c/
Judge Thomas J. Middleton

WE ASK FOR THIS:
/s/
Charles W. Sickels
Counsel for Complainant

OBJECTED TO:
/s/
Charles M. Anderson
Defendant, Pro Se

OBJECTED TO:
/s/
George J. Viertel
Counsel for Defendants Mitsuko Anderson, Trustees and Trust Beneficiaries

VIRGINIA: IN THE CIRCUIT COURT OF FAIRFAX COUNTY

PARCOM, INC., COMPLAINANT, *
*
VS. *
CH. NO. 9822
CHARLES M. ANDERSON, et als, *
DEFENDANT *

On June 17, 1988, Charles M. Anderson tendered to the Court a Statement of Facts. Objections to the Statement were filed on behalf of Parcom, Inc. The Statement presented appears to be incomplete. It contains only selected portions of the trial with commentary by Mr. Anderson.

In addition, the following corrections and comments are added:

Paragraph 1. This Court denies prejudice against the defendant.

3. The Court considered all relevant evidence presented with respect to the manner in which the property was titled.

6. See the written opinion letter dated November 13, 1987 set forth at pages 462 of the record.

9.e.A-F contain allegations which this Court believes are inaccurate.

Finally, it is the recollection of the Court that a court reporter was present during the trial. The Court is unable to recollect all details in a manner sufficient to provide for preparation of a complete Statement of FActs.

Dated: June 27th, 1988. /s/
Judge Thomas J. Middleton

Virginia: In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Monday the 20th day of March, 1989.

Charles M. Anderson, et al., Appellants,

against Record No. 880735
Circuit court NO. C-98228

Parcom, Inc.,

From the Circuit court of Fairfax County

On July 27, 1988 came Charles M. Anderson, in proper person, and Mitsuko Anderson, by counsel, and filed a petition for appeal in the above-styled case.

On consideration of the motion to dismiss filed by the appellee and the objection filed by appellant Charles M. Anderson, the Court hereby grants the motion to dismiss and refuses the petition for appeal.

On further consideration whereof, the remaining motions filed in the case to declare, etc. and to release lien, etc. are hereby denied.

A Copy,
Teste:
David B. Beach, Clerk

By:
/s/
Deputy Clerk

Virginia: In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 21st day of April, 1989.

Charles M. Anderson, et al., Appellants,

against Record No. 880735
Circuit Court No. C-98228

Parcom, Inc., Appellee.

Upon a Petition for Rehearing

On consideration of the petition of the appellants to set aside the judgment rendered herein on the 20th day of March, 1989 and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,

Teste:

/s/
Clerk

Virginia: In the Circuit court for Fairfax county

PARCOM, INC., Complainant,
v.
CHARLES M. ANDERSON, et als., Defendants.
ch.no. 98228

STATEMENT OF FACTS

(Facts, Testimony, and other Incidents of Trial)

COMES NOW defendant pro se CHARLES M. ANDERSON and files his Statement of Facts under Virginia Supreme court Rule 5:11(c) as follows.

1. At the start of trial on October 6, 1987 defendant pro se moved the court for the recusal of Judge THOMAS J. MIDDLETON founded in a history of conflict and prejudice by said judge against said defendant.

2. Complainant admitted (by way of response to defendant pro se's Request for Admissions) that defendant pro se and his wife, co-defendant MITSUKO ANDERSON, held the subject property as Tenants by the En-

tirety (that title recognized by the Commonwealth for husband and wife, each taking the whole) and the court so ruled at trial that complainant had so admitted.

3. The court ruled on the Tenants by the Entirety title based on the deed language of "...fee simple...", "...husband and wife...", and "...Tenants by the Entirety..." without further consideration of the deed frontispiece block nor of the testimonial evidence by the parties to the deed presented on the intent of the parties tothe deed (that there be survivorship), considering it to be unnecessary.

4. Defendant pro se's expert witness (himself) expert testimony (Professional Engineer in civil engineering in the Commonwealth) of only 313 square yards of carpet and pad being installed wasconfirmed by complainant's own evidence of it being only 314 square yards.

5. Defendant pro se testified that he was not agent for his wife, that he did the subject project as his own enterprise under his long-established sole proprietorship AA Engineering, thathis wife had nothing to do with it, that he told complainant president ISHAQ during contract negotiations that he (defendant pro se) was operating as Charles M. Anderson t/a AA Engineering on a "spec" house (house constructed on speculation for a buyer), that the contract was signed a such, (see transcript of defendant pro se's testimony 10/8/87, pp. 1-46)

6. Defendant MITSUKO ANDERSON testified that she had nothing to do with the project, that she spoke to no one at the complainant company, that she knew nothing of the activities or status of any carpet installers or complainant in any way, that it was her husbands business and not hers, th-

at her husband did not do any of these activities for her or on her behalf that she did not move in until that activity had ceased and only then out of necessity for matrimonial shelter; denied contribution to plan, room arrangement, equipment, selections, money to project, management, develope idea, (see transcript of MITSUKO ANDERSON's testimony 10/7/87, pp. 1-29)

7. Complainant president PARAVOIZ ISHAO testified (but only after being impeached by his deposition) that his contract was with Charles M. Anderson t/a AA Enginering, that he never talked to or knew of defendant MITSUKO ANDERSON, that defendant pro se told him from the beginning that he was building the house as a "spec" house, that no one ever reported to him anything concerning defendant MITSUKO ANDERSON, that he and defendant pro se contracted for 500 square yards of carpet and pad installed,

that he recommended the grade and quality of carpet to defendant pro se,

8. Complainant witness SAMULEL WHITMIRE testified (but only after being impeached by his deposition) that he installed certain dimensioned areas of carpet and pad (which calculated to 314 square yards), that the subject house temperature inside during installation was about 40°F., that he had no conversations with defendant MITSUKO ANDERSON, that no one ever reported to him any conversations with defendant MITSUKO ANDERSON, that he took instructions from defendant pro se,

9. Complainant admitted:

a. That they had no contract of any kind with defendant MITSUKO ANDERSON,

b. That they had no contact of any kind with defendant MITSUKO ANDERSON, except that she asked her daughter to serve a lunch to some people in the area when her family was eating at noon as a matter of courtesy,

c. That defendant MITSUKO ANDERSON did no fraud, deceit, misleading, inducement, ratification, directing of activities, ask or answer questions, hire or

fire personnel, speak to complainant or complainant personnel, bargain, promise to pay, accept duty to pay, receipt, accept invoice, offer to look to for direction, authorize, consent, request.

but despite those admissions, continued to play loose with the court by:

A. Attempting to hide from the court upon the court's request certain references in defendant pro se's deposition revealing that the question of area of carpet and pad laid had come up during discovery, to the extent that defendant pro se while a witness had to demand to see certain pages hid from the court by Mr. sickles one by one counting backwards from about page 24 to about page 16 until said court-requested information was found by defendant pro se for the court in spite of Mr. Sickles atttempting to keep it from the court to the extent that when it was found, it was found as being high-lighted in color by complainant's counsel) and even to the extent that Mr. Sickles continued to lie about it later during argument although the revelation described above was so revealed in the face of Judge MIDDLETON with great objection and allegation by defendant pro se against Mr. Sickles' behavior, which Judge MIDDLETON by necessity of his being conscious and present, knew of but did nothing about to chstise or even warn Mr. Sickles of.

B. Attempting to suborne perjury from complainant witness Mr. PARAVAOIZ ISHAQ and to lie during argument about Mr. ISHAQ's knowing that the subject house was a "spec" house, that defendant pro se was building it t/a AA Engineering and the contract

clearly indicated so and Mr. ISHAQ knew these things because he had been told so by defendant pro se, and to misrepresent during argument these same things as appeared in Mr. ISHAQ's and defendant pro se's testimony and depositions,

C. Made conclusory statements of fact to the court without offering evidence of same, knowing them to be false and not supported by the evidence, e.g., defendant pro se made up the sole proprietorship AA Enginering as a scam for this purpose.

D. Attempted to argue to the court that his admissions (in response to defendant pro se's Requests for Admissions) that the subject title was Tenants by the Entirety ownership was in fact no such admission but was instead a statement only that the words "Tenants by the Entirety" appeared on the subject deed, when, in fact the wording of the pertinent Requests for Admission were perfectly clear as to their meaning without any possibility for misunderstanding, and then after losing that lying argument, admitted to the court that those admissions were the biggest mistake of his life that he'll pay for years to come for it.

E. Attempted to suborne perjury from complainant witness Mr. SAMUEL WHITMIRE and to lie during argument about his testimony during trial and deposition that complainant laid only 314 square yards of carpet and pad out of a contracted amount of 500 square yards and the fact that the temperature in the house during installation was about 40°F.,

F. Attempting to introduce totally knew subject matter at trial knowingly and intentionally being a surprise to defense, e.g., that defendants' title was not Tenants by the Entirety, to the extent of attempting to use testimony of Mr. JOHN RUST, Jr., Mr. VETTER, Mr. J. RODNEY JOHNSON, knowing and intending said attempts at evidence to be a misrepresentation of the law and the facts, but utilizing personal and court hatred for defendnt pro se, and Mr. RUST through Mr. GLEN SILVER of Mr. HENRY C. MACKALL's office, and Mr. HENRY C. MACKALL, commissioner.

10. Defendants argued the law, in part as follows:

a. Fuechtenberger v. Williamson
b. Vasilion v. Vasilion
c. Coleman v. Pearman
d. Wallace v. Brumback
e. Weaver v. Harland Corporation
f. VA. Code §43-3, Annotations I.
g. 36 Am Jur Mechanics' Liens §106
h. Freeman contracting Co. v. Lefferdink
i. H&B Co. of Statesville v. Hammond
j. 53 Am Jur 2d Mechanics' Liens§142
k. 53 Am Jur 2d §143, p.664 (1970)
l. 75 A.L.R.3d, Annotation, Estate by Entireties - Individual Debt, p. 1188
m. 36 Am Jur Mechanics' Liens, §§101,
n. §100
o. "104
p. 53 Am Jur Mechancis' Liens §138,
q. §136
r. §142
s. §117

t. 53 Am Jur 2nd Mechanics' Liens §118
u. Ford v. Poston
v. Virginia Code §55-20 and 55-21
w. Mills v. Moore's Super Stores
x. Va. Code §43-7 and 43-11
y. Va. Code §43-23.1
z. Va. Code §54-142 D.
aa. Virginia Supreme Court Rules 4:7 (d)(4), 4:7(a)(7),4:11(b), 4:13, 4:11(b)(4), and 5:11(b)
bb. Berry v. Klinger
cc. Maddux v. Buchanan
dd. Robbins v. Damon
ee. Cohen v. Mayflower
ff. Steigleder & Son v. Allenp Sergeant v. Denby; Cary v. Virginia Concrete; Massie v. Firmstone; Clement v. Adams Bros.,

11. On Janaury 21, 1988 on motion, Judge MIDDLETON stated,

"It appears to me that the case which has been asserted for reconsideration is, primarily, based upon an agency theory. And all of the arguments or many of the arguments that have been made here relate to the fact that there was a contract and that Mrs. Anderson was not the agent of her husband or had not joined in with him in this endeavor to build this house. That is not what the decision that I made is about. My decision is not based on agency. It's not connected with the theory of agency. (emphasis added) It is connected with the fact that improvements were made to this house, and they were made by Mr. Anderson. And connected with that is a statement made

in my opinion and my opinion is, from the testimony of Mrs. Anderson, is that that testimony established that she knew that Mr. Anderson was doing this work. That she, in fact, acquiesced and assented to the performance of this work. Particularly, in this case, the carpet. That's what we are talking about, specifically. (emphasis added) And that she was willing to accept the benfits of the enhanced value to her property. Further, she was a tenant by the entirety. She knew she had an ownership in this property." (transcript 1/21/88, pp. 1-34)

12. Judge MIDDLETON's letter opinion of November 13, 1987 omits the word "expressly" just before the word "authorizing" in his quote from Feuchtenberger at the bottom of his page 2. and has refused to correct or even acknowledge this misrepresentation of the law though complained of and objected to and clearly brought to his attention by defendant pro se.

13. Judge MIDDLETON on Semptember 4, 1987 and Judge JOHANNA FITZPATRICK on Sep-

tember 11, 1987 and again later and at trial Judge MIDDLETON assistedcomplainant to defendants' detriment and out of hatred for defendant pro se in discovery on the issue of "acted on behalf of" and other similar matters of protracted frustration (about a year) of defendants' discovery by complainant through lying and court help, allowing complainant to avoid discovery issues of agency and status of defendant pro se in complainant's allegations and case, viz., general contractor, owner, or agent to harm defense at trial on these issues as well as other issues of surprise at the 24th hour. Defendnat pro se complained of these judicial actions again and again, but was ignored by both judges, e.g., defendant pro se September 18, 1987 letter to both judges jointly, motions, and at trial.

14. On October 7, 1987 at trial Judge MIDDLETON coerced and ordered defendant

pro se to go get his wife, co-defendant MITSUKO ANDERSON, to court over his (defendant pro se's) objection and fromher sick-bed without subpoenae by complainant and without any prior indication whatsoever from complainant of his intending to call her to the stand as his witness.

15. Testimony was not allowed before the court by complainant's witnesses Mr. JOHN RUST, Mr. VETTER, and Mr. J. RODNEY JOHNSON. Additionally their documents were not allowed by ruling. Mr. SICKLES then proceeded to attach them behind his brief submitted to the court at the end of trial as a trick, again playing loose with the court, but the court not chastising Mr. SICKLES for it, causing him further to feel he could continue to misrepresent and play tricks without limit from the court because the court hates defendant pro se.

16. Although defendant pro se had his tape recorder in operation and in plain view on the table before Judge MIDDLETON for three days, Judge MIDDLETON's position is that he gave no permission or authorization of any kind for defendant pro se to so do and that defendant pro se never asked for permission of the court to so do.

17. At trial Judge MIDDLETON denied defendants' motion for dismissal of cause and release of lien founded in Virginia Code §54-142 D., stating that complainant had no knowledge of the section. On March 4, 1988 Judge MIDDLETON denied similarly stating that complainant had no knowledge of the section and gave substantial performance. On May 13, 1988 Judge MIDDLETON denied similarly stating that complainant gave substantial performance because defendant pro se testified that he got "all the carpet he asked for," and again denying defendant

pro se's request to use a tape recorder being without a court reporter, denying that the basis for interpreting "substantial performance" is the contract.

18. The court accepted defendant pro se's testimony as an expert witness in civil enginering and Professional Engineer in the Commonwealth.

19. The court denied defendant pro se's expert witness testimony on premature wear and tear on the carpet despite his testimony on qualifications as follows:

a. B.C.E., M.S.C.E., PH.D., B.S., M.S.C.E. all in various disciplines of civil engineering.

b. 20 years of design experience in civil engineering.

c. 4 years as Director of Engineering for the National Association of Home Builders Research Foundation.

d. Having written 6 books on residential construciton, their contents, and materials for the Department of Housing and Urban Development of the federal government as a client and other books on residential construction for other groups, e.g ,

Home Owners Warranty Corportion, the Office of Technology Assessment of the U. S. Congress, the White House staff, various U. S. senators, etc., having conducted studies for years at NAHB Research Foundation on the life-term of residential contents and materials (specifically including the construction of life-term curves for various materials and contents), having served this court on numerous occasions over a period of years as an expert witness on residential damage and loss and costs and repair including their materials and contents, and doing cost and damage for clients for years,

20. Complainant president witness Mr. PARAVAIZ ISHAQ testified that he knew of the Virginia code §54-142 provisions generally as tothe "place" when questioned at length on it at trial.

21. At the start of trial when defendant pro se was listing instances of prejudice and conflict by Judge MIDDLETON against him, Judge MIDDLETON interrupted and stopped defendant pro se from continuing over defendant pro se's argument that it was an essential and necessary part of his defense, due process, and right to a

fair hearing, that defendant had alleged in open court (as well as elsewhere prior and subsequent thereto) that Judge MIDDLETON was attempting to conspiratorally and wrongfully take his house from him. Judge MIDDLETON said that no other judge had agreed with defendant pro se on those allegations (though not one word had ever been allowed to be heard on the truth of the facts of the allegations) and that no other judge would hear this case (trial) because defendant pro se had sued so many of them, so he had to.

22. Defendants got no Title 43 notice.

23. The court nor complainant never qualified the translator in defendant MITSUKO ANDERSON's language, viz., Okinawan.

24. Defendant MITSUKO ANDERSON gave no testimony of consent, assent, authorization, or acquiescence, but did give testimony to the opposite.

25. Complainant gave no evidence of:

a. Duty on the part of MITSUKO ANDERSON to do anything regarding complainant,

b. Duty on the part of MITSUKO ANDERSON to repudiate anything.

c. Knowledge of anything, nor any basis for inferring knowledge.

d. Any activity or act on the part of MITSUKO ANDERSON concerning anything.

e. Anything to refute what any defendant testified to about anything.

/s/
Charles M. Anderson
Apellant/Defendant Pro Se
8401 Cathedral Forest Dr.
Fairfax Station, VA. 22039
643-2562
5/17/88

Virginia; In the Circuit Court of Fairfax County

SMITTY'S LUMBERTERIA, INC., Complainant,	)	
v.	)	CH. NO.
	)	90299
CHARLES M. ANDERSON, et al, Defendant s.	)	

ORDER

This matter having come before the Court upon the Motion of Complainant Smittys Lumberteria for Partial Summary Judgment on a Bill to Enforce a Mechanic's Lien, and this Court having considered the Memoranda in support thereof and in opposition thereto, and the Court having heard argument on this matter on Friday, May 3, 1985; and

IT APPEARING to the Court that, in accordance with Section 43.1 et seq. of the Code of Virginia and the established case law that defendnt Mitsuko Anderson's undivided interest in the property held as tenants-by-the-entireties cannot be affected by the lien asserted by Complainant without

the establishment of certain disputed material facts; and

IT FURTHER APPEARING to the Court that for the above-stated reason and the reasons stated in this court's letter-opinion dated May 16, 1985, which is incorporated by reference herein, the Motion for Partial Summary Judgment should be denied, it is this ___ day of May, 1985

ORDERED, ADJUDGED AND DECREED That the Motion be, and the same hereby is, denied.

17 July 1985

/s/
J. Howe Brown, Judge

WE ASK FOR THIS:

/s/
David H. Cox
Jackson & Campbell, P.C.
1008 N. Randoph Street
Suite 104
Arlington, Virginia 22201
(703) 522-1330

Attorneys for Defendants
Charles M. Anderson, Mitsuko Anderson,
and Charles M. Anderson, t/a A.A. Eng'g

SEEN AND OBJECTIONS NOTED:

/s/ Michael L. Houliston

4510 Old Columbia Pike
Annandale, Virignia 22003
(703) 354-2727

Attorney for Plaintff
Smitty's Lumberteria, Inc.

Nineteenth Judicial circuit of Virginia
Fairfax County Judicial Center

May 16, 1985

Michel L. Houliston, Esq.
Marshall H. Brooks, Esq
William L. Schmidt, Esq
John H. M. Yen
Pearl Ko Yen
David H. Cox, Esq.

Re: Smitty Lumberteria, Inc. v.
Charles M. Anderson, et al.
Chancery No. 90299

Gentlemen:

This matter comes before me on Complainant's Motion for Summary Judgment on a Bill to Enforce a Mechanic's Lien. In support of this Motion, Complainant asserts that partial summary judgment is appropriate because it is uncontested that Defendants Charles M. and Mitsuko Anderson are owners of the subject premises; received notice of Complainant's claim accompanied by a verified accounting; and have acknowledged that the partial value of the materials furnished is $3,438.80. In opposition to

Complainant's Motion, Defendants Charles M. and Mitsuko Anderson argue that the lien is unenforceable against property held by them as tenants by the entirety because only Defendant Charles M. Anderson contracted for the materials upon which the lien is based. The named Defendants also assert that partial summary judgment is precluded at this point because service of process has not been made on all of the Defendants. After considering the facts of the case, the applicable law, and the arguments of Counsel, it is this Court's decision that the Complainant's Motion be denied.

Virginia code section 43.1 et seq. the Mechanic's Lien Statute, has been construed to authorize mechanic's liens only upon the interest or estate in the land of the person requiring or authorizing the work. Feuchtenberger v. Williamson, Carroll & Saunders, 137 Va. 578, (1923). If, as De-

fendants assert, only Defendant Charles M. Anderson authorized the materials underlying the mechanic's lien at issue in this litigation, Defendant Mitsuko Anderson's undivided interest in the property can not be affected by the lien. This is because "where a tenancy by the entirety in the fee simple is once created the property is completely immune from the claims of creditors against either husband or wife alone." Vasilion v. Vasilion, 192 Va. 735, 740 (1951). See also Freeman contracting company v. Lefferdink, 419 S.W.2d 266 (Mo. 1967) (where property is held by husband and wife as tenants by the entirety, neither by their own individual act can subject property to mechanic's lien); H & B Company of Statesville v. Hammond, 195 S.E.2d 58 (N.C. 1973) (where property against which claim of lien for materials isfiled is owned by husband and wife as tenants by entireties, plaintiff is not entitled to have lien enforced

against the property if wife was not a party to the contract pursuant to which materials were furnished). Because the issues of whether Mitsuko Anderson expressly authorized the purchase of materials, utilized Charles M. Anderson as her agent in this matter, or is otherwise estopped by her conduct from contesting the lien involve questions of fact to be determined at trial, summary judgment is not available to the Complainant at this time.

For the reasons stated in this opinion letter, and because there is a question regarding proper service on all of the Defendants in this action, Complainant's Motion for Partial Summary Judgment is denied. Counsel for Defendants Charles M. Anderson t/a A.A. Engineering, Charles M. Anderson, individually and Mitsuko Anderson shall prepare an appropriate order and submit it to Counsel for complainant for approval as to

form.

Very truly yours,

/s/
J. Howe Brown

Va. Code §54-113

"...(2) "General contractor" or "subcontractor" shall mean any person, firm, association, or corporation that for a fixed price...contracts for performing...improvement of any building or structure permanently annexed to real property,...owned ...by another person or any other improvements to such real property..."

Va. Code §54-128

"Necessity for license and certificate of registration. It shall be unalwful for any person to engage in, or offer to engage in general contracting or subcontracting in this State, unless he has been duly licensed and issued a certificate of registration under the provisions of this chapter; however, the issuance of such certificate shall not entitle the holder to engage in any activity for which a special license is required by law, except

as provided in §54-145.2."

Va. Code §54-142

"Penalty for violation of chapter. Any person not being duly authorized who shall contract for or bid upon the construction, removal, repair or other improvements to or upon real property witout having first complied with the provisions hereof,... shall be deemed guilty of a misdemeanor. ..."Provided that no person shall be entitled to assert this section as a defense to any action at law or suit in equity if the party who seeks to recover from such person gives substantial performance within the terms of the contract in good faith and without actual knowledge of this section." (emphasis added)

Fairfax County, Virginia Ordinance Business, Professional and Occupational License Tax, Chap 4, Article VII, Div.1

"Section 4-7-14. License required; penalty for failure to comply with Article.

(a) It shall be unlawful and constitute a misdemeanor for any person to conduct a business, or to engage in a profession, trade or occupation without a license under the provisions of this Article."

Virginia Supreme Court Rules

Rule 5:11(d)

"...Within ten days after the notice of objection is filed with the clerk of the trial court, the judge shall: (1) overrule the objection; (2) make any corrections that he deems necessary; (3) include any accurate additions to make the record complete; (4) certify the manner in which the record is incomplete; and (5) sign the transcript or written statement. ..."

(emphasis added)